

ORIGINAL

MEMORANDUM ENDORSEMENT

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/4/07

Railroad Insurance Underwriters v. Certain Underwriters at Lloyd's London, Excess Insurance Company Limited and Harper Insurance Limited, 07 Civ. 3071 (LLS)

Defendants move for dismissal of the complaint and directing arbitration of this claim for over \$2,000,000 under a reinsurance contract. The arbitration clause is narrow, requiring that disputes "as to the interpretation of the contract" be submitted to arbitration.

Plaintiff argues that the claim is for a "simple failure to make payment" and thus falls under the "service of suit" clause that provides that if the defendants fail to pay an amount claimed to be due, they "will submit to the jurisdiction of any Court of competent jurisdiction within the United States . . ."

But the question is: whether the defendants should make the payment to plaintiff (an incorporated association of member insurance companies) or to the liquidator of the relevant insolvent member? It is an important matter to defendants, who need assurance that the payment will extinguish the obligation. Resolution of that question requires interpreting clauses in the underlying contract, a function which is confided to arbitrators.

That conclusion is reinforced by the dispute whether the contract requires plaintiff to give defendants access to certain records, and by the established policy favoring arbitration.

This action will be stayed until the completion of the arbitration, at which point counsel are to notify the court.

So ordered.

DATED: New York, New York
June 4, 2007

Louis L. Stanton
LOUIS L. STANTON
U. S. D. J.

MEMORANDUM ENDORSED

Brian E. O'Donnell, Esq.
Federal Bar No. BEO-7458
RIKER, DANZIG, SCHERER, HYLAND & PERRETTI LLP
500 Fifth Avenue, Suite 4920
New York, NY 10110
(212) 302-6574
Attorneys for Excess Insurance Company Limited and
Harper Insurance Limited

100

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

RAILROAD INSURANCE UNDERWRITERS,

Plaintiff,

v.

CERTAIN UNDERWRITERS AT LLOYD'S
LONDON, EXCESS INSURANCE COMPANY
LIMITED and HARPER INSURANCE LIMITED,

Defendants.

Civil Action No. 07-cv-3071 (LLS) (RLE)

Hon. Louis L. Stanton, U.S.D.J.

NOTICE OF MOTION FOR AN ORDER DISMISSING THE LITIGATION AND COMPELLING ARBITRATION

ORAL ARGUMENT REQUESTED

[Electronically Filed April 19, 2007]

PLEASE TAKE NOTICE that defendants Excess Insurance Company Limited ("Excess") and Harper Insurance Limited ("Harper"), by and through their attorneys, Riker, Danzig, Scherer, Hyland & Perretti LLP, upon the annexed Certification of Brian E. O'Donnell dated April 19, 2007 and the accompanying Memorandum of Law, and upon all prior pleadings and proceedings had herein, hereby move this Court pursuant to 9 U.S.C. §§ 3, 4 and 206 for an Order dismissing the captioned action and compelling plaintiff Railroad Insurance Underwriters to proceed to arbitration of its claims against defendants herein.

MEMORANDUM ENDORSED

MEMORANDUM ENDORSED

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is also submitted herewith.

PLEASE TAKE FURTHER NOTICE that Excess and Harper request oral argument if timely opposition to this motion is received.

Dated: April 19, 2007

By: /s/ 
Brian E. O'Donnell (BEO-7458)
RIKER, DANZIG, SCHERER, HYLAND
& PERRETTI LLP
500 Fifth Avenue, Suite 4920
New York, NY 10110
(212) 302-6574
Attorneys for Defendants Excess Insurance
Company Limited and Harper Insurance
Limited

TO: Allan J. Sorkowitz, Esq.
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
Attorneys for Plaintiff Railroad Insurance Underwriters

David P. Stich, Esq.
SOLOMON PEARL BLUM HEYMANN & STICH LLP
40 Wall Street, 35th Floor
New York, NY 10005
(212) 267-7600

-- and --
Bruce R. Grace, Esq.
BAACH ROBINSON & LEWIS PLLC
1201 F Street, NW, Suite 500
Washington, DC 20004
(202) 659-6742
Attorneys for Certain Underwriters at Lloyd's, London